

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION

GREENBRIER HOTEL CORPORATION;  
JAMES C. JUSTICE COMPANIES, INC.;  
TWIN FIR ESTATES, LLC; WILCOX  
INDUSTRIES, INC.; JUSTICE LOW SEAM  
MINING, INC.; PLAYERS CLUB, LLC;  
JUSTICE FAMILY GROUP, LLC;  
GREENBRIER MEDICAL INSTITUTE, LLC;  
GREENBRIER GOLF & TENNIS CLUB  
CORPORATION; THE GREENBRIER  
SPORTING CLUB DEVELOPMENT CO., INC.;  
THE GREENBRIER SPORTING CLUB, INC.;  
TAMS MANAGEMENT, INC.; BELLWOOD  
CORPORATION; OAKHURST CLUB, LLC;  
JAMES C. JUSTICE, II; CATHY L. JUSTICE;  
and JAMES C. JUSTICE, III,

*Plaintiffs,*

v.

Case No. 05:23-cv-00731

CARTER BANK & TRUST; CARTER  
BANKSHARES, INC.; LITZ H. VAN DYKE;  
PHYLLIS Q. KARAVATAKIS; MICHAEL R.  
BIRD; KEVIN S. BLOOMFIELD; ROBERT  
BOLTON; GREGORY W. FELDMANN;  
JAMES W. HASKINS; JACOB A. LUTZ, III; E.  
WARREN MATTHEWS; CATHARINE L.  
MIDKIFF; CURTIS E. STEPHENS; and  
ELIZABETH LESTER WALSH,

*Defendants.*

**PLAINTIFFS' MOTION FOR LEAVE  
TO FILE FIRST AMENDED COMPLAINT**

Plaintiffs move the Court for leave to file their First Amended Complaint, a redacted copy of which is attached hereto as **Exhibit A**, with the corresponding unredacted pleading this day

being tendered under seal and served on Defendants. Plaintiffs submit that the proposed First Amended Complaint should be temporarily sealed for the same reasons set forth in the memorandum of law [Doc. 5-1] filed in support of their corrected motion to seal the Complaint, which Plaintiffs incorporate here in its entirety. Plaintiffs further state:

1. In conformance with the Rules of Civil Procedure, Plaintiffs may amend their Complaint with leave of the Court, and leave should be “freely give[n] . . . when justice so requires.” FED. R. CIV. P. 15(a)(2).

2. Defendants have yet to answer the initial Complaint. Plaintiffs seek to supplement that Complaint with an additional claim (Count Six) for declaratory relief, together with the necessary factual allegations in support. If ultimately adjudicated in Plaintiffs’ favor, Count Six would invalidate a purported agreement among the parties that Plaintiffs assert was used by Defendants as an instrument of the unlawful conduct alleged in the Complaint. Justice therefore requires, particularly given the nascency of these proceedings, that Plaintiffs be permitted to formally put in issue whether the subject agreement may be enforced.

3. By its Order of January 17, 2024 [Doc. 32], the Court deferred decision on sealing the operative Complaint and stayed motion practice challenging the propriety of venue in this forum and personal jurisdiction over the director Defendants [Docs. 16-18, 20], bifurcating consideration of Defendants’ motion to dismiss the redacted Complaint pursuant to Rule 12(b)(6) [Docs. 30-31].

4. The Court may accept the First Amended Complaint for filing without disturbing the stay currently in effect. The addition of Count Six would not affect the legal analysis bearing on personal jurisdiction or venue. Further, because the substantive components of Count Six and supporting allegations have been redacted for the time being as nonpublic, the underlying claim is

beyond the scope of Defendants' 12(b)(6) motion targeting the legal sufficiency of the public allegations. Moreover, because this motion and the First Amended Complaint must inevitably be considered either by this Court or in the proposed transferee venue, Defendants will suffer no prejudice from submission of those materials sooner rather than later.

5. This motion for leave to amend is therefore not "motion practice" within the contemplation of the stay. Should the Court conclude the opposite, Plaintiffs request in the alternative that the stay be lifted for the limited purpose of accepting this motion and then immediately be reimposed.

Plaintiffs thus request that the Court: (i) grant this Motion; (ii) accept the First Amended Complaint for filing under seal; and (iii) afford them such other and further relief as may be appropriate.

DATED: February 14, 2024

Respectfully submitted,

GREENBRIER HOTEL CORPORATION  
JAMES C. JUSTICE COMPANIES, INC.  
TWIN FIR ESTATES, LLC  
WILCOX INDUSTRIES, INC.  
JUSTICE LOW SEAM MINING, INC.  
PLAYERS CLUB, LLC  
JUSTICE FAMILY GROUP, LLC  
GREENBRIER MEDICAL INSTITUTE, LLC  
GREENBRIER GOLF & TENNIS CLUB CORPORATION  
THE GREENBRIER SPORTING CLUB DEVELOPMENT CO., INC.  
THE GREENBRIER SPORTING CLUB, INC.  
TAMS MANAGEMENT, INC.  
BELLWOOD CORPORATION  
OAKHURST CLUB, LLC  
JAMES C. JUSTICE, II  
CATHY L. JUSTICE

JAMES C. JUSTICE, III

By Counsel:

/s/ Steven R. Ruby

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***Counsel for Plaintiffs***

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on February 14, 2024, the foregoing *Plaintiffs' Motion for Leave to File First Amended Complaint* was served electronically through the Court's CM/ECF system, providing notice of the filing to counsel of record.

/s/ Steven R. Ruby

Steven R. Ruby (WVSB #10752)